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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In Re:

RUSSEL WAYNE LESTER, an individual,
dba Dixon Ridge Farms,

Debtor in Possession.

Case No: 20-24123-E-11

Chapter 11

DCN: FWP-2

Date: September 17, 2020

Time: 11:00 a.m.

Courtroom: 33 – Judge Ronald H. Sargis
501 I Street, 6th Floor
Sacramento, CA95814

**OPPOSITION TO MOTION FOR FINAL ORDER AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING REPLACEMENT LIENS**

First Northern Bank of Dixon, a California corporation (“**Bank**” or “**Lender**”),
creditor in this case, hereby files its opposition (the “**Opposition**”) to the Motion For An
Order Authorizing Use of Cash Collateral and Granting Replacement Liens (the “**Motion**”)
filed by a debtor in possession, Russell Wayne Lester (“**Debtor**”).

1 On September 1, 2020, Debtor made his Emergency Motion for and Order (A)
2 Authorizing Interim and Final Use of Cash Collateral; (B) Granting Replacement Liens; and
3 (C) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001(the “**Emergency Motion**”).
4 On September 8, 2020, the Court entered its Order on the Emergency Motion (the “**Interim**
5 **Order**”) which authorized the Debtor to use the cash collateral of Bank and Prudential
6 Insurance Company of America (“**Prudential**”) and any disputed producer lien creditors that
7 may exist (collectively, “**Secured Creditors**”) on an interim basis through September 16,
8 2020, for necessary expenses in the amount of \$166,325.00 plus a 15% variance for
9 emergencies during the pre-harvest period as described in the Motion.

10 In addition, for the purpose of attempting to provide adequate protection for the
11 interests of the Secured Creditors, to the extent of any diminution in Secured Creditor’s
12 interest in the Debtor in Possession’s pre-petition cash collateral caused by Debtor in
13 Possession’s post-petition use of such pre-petition cash collateral, the Interim Order granted to
14 the Secured Creditors:

15 a. A valid, perfected, and enforceable replacement lien under Sections
16 105, 361(2), and 363(e) of the Bankruptcy Code in the Debtor’s post-petition cash collateral
17 and proceeds thereof to the same extent and with the same priority that Secured Creditors’
18 held in the Debtor in Possession’s pre-petition cash collateral as of the Petition Date, (the
19 “**Cash Collateral Replacement Lien**”);

20 b. A valid, perfected, and enforceable replacement lien under Sections
21 105, 361(2), and 363(e) of the Bankruptcy Code in the Conservation Easement, as defined in
22 the Motion, to the same extent and with the same priority that Secured Creditors held in the
23 Debtor in Possession’s pre-petition cash collateral as of the Petition Date (the “**Conservation**
24 **Easement Replacement Lien**”).

25 In addition, for the purpose of attempting to provide adequate protection for the
26 interests of Bank, to the extent of any diminution in Bank’s interest in the Debtor’s pre-petition
27 cash collateral caused by Debtor’s post-petition use of such pre-petition cash collateral, the
28

1 Interim Order granted to Bank:

2 a. A valid, perfected, and enforceable replacement lien under Sections
3 105, 361(2), and 363(e) of the Bankruptcy Code in the Putah Creek Road real property, as
4 defined in the Motion to the same extent and with the same priority that the Bank held in the
5 Debtor in Possession's pre-petition cash collateral as of the Petition Date (the "**Putah Creek**
6 **Replacement Lien**");

7 b. To the extent that FNB does not already possess a valid, first priority
8 lien in the Debtor's crops now growing or grown in the 2020 crop year (the "**2020 Crops**"), a
9 valid, perfected, and enforceable first-priority lien, under Sections 105, 361(2), and 364(d) of
10 the Bankruptcy Code on the all 2020 Crops, senior in priority to any other security interests
11 and liens in the 2020 Crops, to the same extent and validity of the lien of FNB held in the
12 Debtor's pre-petition cash collateral as of the Petition Date (the "**Post-Petition Crop Lien**");

13 This Opposition is supported by the Declaration of Chaille James (the "**James**
14 **Declaration**"), and the Request for Judicial Notice ("**RJN**"), each filed and served herewith,
15 as well as the papers, files, and records of this court in the within bankruptcy case and upon
16 such oral and documentary evidence as may be put forth at the time of the hearing, if any.
17 Copies of the supporting pleadings may be viewed upon request of the Clerk of the
18 Bankruptcy Court at the address set forth above.

19
20 **I.**

21 **FACTUAL SUMMARY**

22 **The Loans and Collateral**

23 **Ag Production Loan**

24 As set forth in the James Declaration, Debtor is indebted to Lender under a loan in the
25 original maximum principal amount of Two Million Eight Hundred Thousand and 00/100
26 dollars (\$2,800,000.00) (the "**Ag Production Loan**"). The Ag Production Loan is evidenced
27 by, among other documents, the Ag Production Note, the Ag Production Security Agreement,
28 the Ag Production Loan Agreement (each as defined in the James Declaration), which are

1 attached as **Exhibits A, B and C** to the James Declaration. The relevant terms and provisions
2 of the Ag Production Loan Documents¹ are set forth in the James Declaration. [*James*
3 *Declaration, par. 4 thru 19*]

4 The Ag Production Loan was made to finance the expenses associated with the
5 growing, cultivation and harvest of the crops grown by Debtor in the 2019 crop year (the
6 “**2019 Crops**”).

7 Under the terms of Ag Production Note, Debtor promised to pay the Ag Production
8 Loan in one payment of all outstanding principal plus all accrued unpaid interest on January
9 30, 2020 (the “**Ag Production Loan Maturity Date**”). [*James Declaration, par.6*] Debtor is
10 in default under the Ag Production Loan Documents for failure to pay all principal and
11 interest owing under the Ag Production Loan on the Ag Production Loan Maturity Date (the
12 “**Ag Production Loan Payment Default**”). [*James Declaration, par.17*]

13 As of June 10, 2020, the sum of \$2,896,604.03 was due and owing under the Ag
14 Production Loan consisting of principal in the amount of \$2,800,000.00, and interest in the
15 amount of \$96,604.03. [*James Declaration, par. 19*]²

16 **Asset Based Line of Credit**

17 Mr. Lester is also indebted to Lender under an Asset Based Line of Credit in the
18 original maximum principal amount of Five Million and 00/100 dollars (\$5,000,000.00) (the
19 “**Asset Based Line of Credit**” or “**ABL**”). The Asset Based Line of Credit is evidenced by,
20 among other documents, the ABL Note, the ABL Security Agreement, and the ABL Loan
21 Agreement (each as defined in the James Declaration), which are attached as **Exhibits G, H**
22 and **I** to the James Declaration. The relevant terms and provisions of the ABL Loan
23 Documents are set forth in the James Declaration. [*James Declaration, par.20 thru 38.*]
24
25

26 ¹ Capitalized terms not otherwise defined herein shall have the meaning as defined in the James Declaration.

27 ² Upon filing its Proof of Claim for the Ag Production Loan the Bank will update the amounts owing under the
28 Ag Production Loan to accurately reflect the amounts owing as of the Petition Date.

1 Under the terms of the ABL Note, Mr. Lester promised to pay the ABL in one
2 payment of all outstanding principal plus all accrued unpaid interest on June 5, 2020 (the
3 “**ABL Maturity Date**”). *[James Declaration, par.22]* Mr. Lester is in default under the ABL
4 for failure to pay the ABL in full on the ABL Maturity Date (the “**ABL Payment Default**”).
5 *[James Declaration, par.35]*

6 As of June 10, 2020, the sum of \$5,055,159.72 was due and owing under the ABL
7 consisting of principal in the amount of \$5,000,000.00, and interest in the amount of
8 \$55,159.72. *[James Declaration, par.28]*³

9 **Personal Property Collateral**

10 The Ag Production Loan and the ABL Loan are secured, respectively, by the ABL
11 Security Agreement and the ABL Security Agreement (the “**Security Agreements**”). *[James*
12 *Declaration, par.11, 29]*

13 Pursuant to the terms of the Security Agreements, Mr. Lester granted to Lender
14 security interests (the “**Security Interests**”) in all Inventory, Chattel Paper, Accounts,
15 Equipment, General Intangibles, Crops, Farm Equipment and Contracts, as more fully
16 described in the Ag Production Security Agreement (the “**Personal Property Collateral**”).
17 *[James Declaration, par.12, 30]*

18 The Security Interests in the Personal Property Collateral are perfected by the UCC
19 Financing Statements (the “**Financing Statements**”) attached to the James Declaration as
20 **Exhibits C, D, E, and F** (the “**Financing Statements**”), which are incorporated herein by this
21 reference. *[James Declaration, par.14, 32]*

22 **Real Estate Loan**

23 Mr. Lester and his wife, Kathleen Hamrock Lester (together “**Borrowers**”) are
24 indebted to Lender under a real estate term loan in the original principal amount of Two
25

26 _____
27 ³ Upon filing its Proof of Claim for the ABL the Bank will update the amounts owing under the ABL to
28 accurately reflect the amounts owing as of the Petition Date.

1 Million and 00/100 Dollars (\$2,000,000.00) (the “**Real Estate Loan**” or the “**RE Loan**”).
2 *[James Declaration, par. 39.]*

3 The RE Loan is evidenced by that is evidenced by, among other documents, the RE
4 Note (as defined in the James Declaration), which is attached as **Exhibits K** to the James
5 Declaration. The relevant terms and provisions of the RE Loan are set forth in the James
6 Declaration. *[James Declaration, par. 39 thru 47.]*

7 The RE Loan is secured by the certain Deed of Trust dated April 22, 2009 (the “**RE**
8 **Loan Deed of Trust**”) executed by Borrowers as Trustors, in favor of Lender, as Beneficiary,
9 recorded in the Official Records of Solano County, California on April 30, 2009, as Document
10 No. 200900032520. *[James Declaration, par. 45 thru 47.]* A true and correct copy of the RE
11 Loan Deed of Trust is attached to the James Declaration as **Exhibit L** and incorporated herein
12 by this reference.

13 The RE Loan Deed of Trust encumbers the Borrowers’ interest, in a first priority
14 position, in the Putah Creek Property.

15 Under the terms of the RE Note, upon the occurrence of an Event of Default (as
16 defined in the RE Note), Lender may declare the entire unpaid principal balance under the RE
17 Note and all accrued and unpaid interest to be immediately due.

18 Under the terms of the RE Note, the failure of Borrowers to comply with or perform
19 any term, obligation, covenant or condition contained in any other agreement between Lender
20 and Borrowers, shall constitute an Event of Default under the RE Note (the “**Cross Default**
21 **Provision**”). As a result of the Cross Default Provision, the Ag Production Loan Default and
22 the ABL Payment Default constitutes event of default under the under the RE Loan, and as a
23 result, Bank declared the amounts owing under the RE Loan to be immediately due and
24 payable in full.

1 As of April 22, 2020, the sum of \$1,415,185.70 was due and owing under the RE Loan
2 consisting of principal in the amount of \$1,406,303.73, interest in the amount of \$8,637.90,
3 and reconveyance, recording and statutory fees in the amount of \$244.00.⁴

4 **Home Equity Line of Credit**

5 Borrowers are also indebted to Lender under a Home Equity Line of Credit in the
6 maximum principal amount of \$500,000.00 (the “**HELOC**”). The HELOC is evidenced by
7 that certain HELOC Agreement. *[James Declaration, par. 45.]* A true and correct copy of the
8 HELOC Agreement is attached to the James Declaration as **Exhibit M**.

9 The HELOC is secured by that certain Deed of Trust dated January 3, 2005 (the
10 “**HELOC Deed of Trust**”) executed by Borrowers as Trustors, in favor of Lender, as
11 Beneficiary, recorded in the Official Records of Solano County, California on January 11,
12 2005, as Document No. 200500004475. *[James Declaration, par. 49.]* A true and correct
13 copy of the HELOC Deed of Trust is attached to the James Declaration as **Exhibit N** and
14 incorporated herein by this reference.

15 The HELOC Deed of Trust encumbers the Borrowers’ interest in the Putah Creek
16 Property. *[James Declaration, par. 50.]*

17 Pursuant to that certain Subordination Agreement dated April 22, 2009 and recorded in
18 the Official Records of Solano County on April 30, 2009 (the “**Subordination Agreement**”),
19 the HELOC Deed of Trust is subordinated to the RE Loan Deed of Trust. As such, the
20 HELOC Deed of Trust constitutes a lien on the Putah Creek Property in a second priority
21 position. *[James Declaration, par. 51.]*
22
23
24
25
26

27 ⁴ Upon filing its Proof of Claim for the RE Loan the Bank will update the amounts owing under the RE Loan to
28 accurately reflect the amounts owing as of the Petition Date.

As of Petition Date, approximately \$503,835.62 is owed under the HELOC.⁵ [James Declaration, par. 52.]

The State Court Action

On April 24, 2020, Bank filed a Verified Complaint (the “**Complaint**”) in Solano County Superior Court (the “**State Court**”) as Case no. FCS 054698 (the “State Court Action”), alleging causes of action for, *inter alia*, breach of contract under the Ag Production Loan, the ABL and the RE Loan and seeking to enforce Bank’s rights and remedies.⁶ [James Declaration, par. 53.]

On June 12, 2020, the State Court issued its Order Appointing Receiver, Temporary Restraining Order and Order to Show Cause (the “**Receiver Order**”), appointing Donald G. Howell (the “**Receiver**”) as receiver over the Personal Property Collateral (excluding growing crops). A true and correct copy of the Receiver Order is attached to the RFJN as **Exhibit A**.

II.

OPPOSITION

A. The Adequate Protection Offered By Debtor Is Inadequate

1. Adequate Protection Should Be Based On The Market Value of Inventory Not Forced Liquidation Value

In the Omnibus Declaration of Russell Wayne Lester filed in support of the Motion (the “**Lester Declaration**”), the Debtor states that the only way to accomplish the Debtor’s goal of paying off the Bank is to maximize the value of the Bank’s collateral. [Lester Declaration, page 2, par. 6]

The Debtor further states that Dixon Ridge Farms has approximately 3,915,003 in total “In-Shell” and “Meat” pounds of walnuts based on Exhibit D to the State Court Receiver’s

⁵ Upon filing its Proof of Claim for the HELOC the Bank will update the amounts owing under the HELOC to accurately reflect the amounts owing as of the Petition Date.

⁶ The HELOC was not the subject of any of the causes of action alleged in the Complaint.

1 first status report (the “**Receiver Report**”) and that the Receiver valued in the Receiver
2 Report at \$3,759,737. [*Lester Declaration, page12, par. 28.d.*] The Receiver Report is
3 attached as Exhibit E to the Debtor’s Exhibits filed in support of the Motion.

4 The Receiver Report indicates that the Receiver’s value of the Walnut Inventory is
5 based on the marketing conditions outlined in the Receiver Order. The Receiver Order
6 provided for the Receiver to take possession of the Walnut Inventory and sell the Walnut
7 Inventory through a UCC sale. As such, the value of the Walnut Inventory per the Receiver
8 Report is based on a forced-sale liquidation value.

9 The Debtor further states that if the Court approves the use of cash collateral and
10 allows the business to reopen and commence making market sales, the valuation of the
11 Walnut Inventory will increase post-petition almost immediately to reflect the higher prices to
12 be obtained from ordinary course and anticipated post-petition bulk sales. [*Lester*
13 *Declaration, page12, par. 28.d.*]

14 **a. Value of Inventory on Debtor’s Schedules**

15 In Schedule A/B to the Debtor’s bankruptcy petition (“**Schedule A/B**”), the Debtor
16 values his “crops” at \$4,743,347.00. A true and correct copy of Schedule A/B, with all
17 attachments, is attached as **Exhibit B** to the RFJN.

18 Attachment H to Schedule A/B shows that the “crops” as shown on Schedule A/B
19 includes the Debtor’s inventory of walnuts (the “**Walnut Inventory**”). The Walnut Inventory
20 as shown on Schedule A/B is exactly the same as the Walnut Inventory shown in the Receiver
21 Report. Both the Receiver Report and Schedule A/B show the amount of Walnut Inventory in
22 terms of pounds (3,915,003), and the breakdown between “In-Shell” and “Meat” pounds is
23 exactly the same. In addition, the Receiver Report and Schedule A/B both show the value of
24 the Walnut Inventory at \$3,759,737, with the exact same breakdown of “In-Shell” and “Meat”
25 values. In addition, the price per pound used in Schedule A/B is the same as in the Receiver
26 Report, and is shown as follows:
27
28

Value/Pound	2018	2019
In-Shell \$/Lb	\$0.60	\$0.65
Meat \$/Lb	\$1.25	\$1.80

b. Value of Inventory On Debtor's July 31 Inventory Report

On August 20, 2020 (one week before the bankruptcy petition was filed), the Debtor sent an email to the Receiver (the "**August 20 Email**"). The Bank was copied on the August 20 Email. A true and correct copy of the August 20 Email is attached to the James Declaration as **Exhibit O**.

As shown in the email chain included in the August 20 Email, the August 20 Email was in response to an email from the Receiver which, among other things, requested that the Debtor provide an updated inventory accurate as of July 31, 2020.

An Inventory Report entitled "DRF Inventory 7-31-2020.xlsx" (the "**July 31 Inventory Report**") was attached by the Debtor to the August 20 Email. A true and correct copy of the July 31 Inventory Report is attached to the James Declaration as **Exhibit P**.

The July 31 Inventory Report values the Walnut Inventory at a "Post COVID 19 Value" of \$11,888,189.21, broken down as follows:

	Pounds	\$/Lb	Total Value
Total Inshell	1,695,648	\$1.56	\$ 2,645,278.71
Total Meat in Bins	2,450,412	\$4.50	\$ 9,204,354.00
Cases of Inshell	360	\$2.20	\$ 792.00
Total cased Meat #s	8,035	\$4.70	\$ 37,764.50
Total Lbs	3,749,455		\$ 11,888,189.21

The total pounds of Walnut Inventory shown on the Debtor's July 31 Inventory Report is 165,548 pounds less than the pounds shown on Schedule A/B and the Receiver's Report. The apparent explanation for that is that the Receiver Report was dated as of July 10, 2020, and apparently reflected the Walnut Inventory as of June 30, 2020.

1 Contrary to the assertions in the Lester Declaration [*Lester Declaration, page 5, lines*
2 2-3], the Receiver did not prohibit ongoing operations and sales and the company was not
3 closed as of the Petition Date. In an email to the Debtor from the Receiver sent on July 3,
4 2020 on which the Bank was copied (the “**July 3 Email**”), the Receiver sent a letter to the
5 Debtor regarding “Ongoing Duties” (the “**Ongoing Duties Letter**”). A true and correct copy
6 of the July 3 Email and the Ongoing Duties Letter is attached to the James Declaration as
7 **Exhibit R**. Pursuant to the Ongoing Duties Letter, the Receiver allowed the Debtor to
8 continue to process the Walnut Inventory.

9 On August 27, 2020, which was the Petition Date, the Receiver sent an email to the
10 Bank and Mr. Lester (the “**August 27 Email**”) indicating that he was provide the “ordinary
11 course sale” for 7/27 through that day of 33,780 pounds shipped with an invoice total of
12 \$184,902.32, which equates to \$5.46 per pound. A true and correct copy of the August 27
13 Email is attached to the James Declaration as **Exhibit S**.

14 Based on the information contained in the August 20 Email, and the August 27 Email,
15 it is clear that the Debtor continued to process and sell Walnut Inventory up to the Petition
16 Date.

17 Since the Debtor’s goal as stated in the Lester Declaration is to maximize the value of
18 the Bank’s collateral, and since the Debtor contends that the Chapter 11 bankruptcy will allow
19 the Debtor to continue in business and increase the value of the Walnut Inventory to ordinary
20 course value, the Debtor should be required to provide the Bank adequate protection for the
21 use of the Walnut Inventory, based on the \$11,888,189.21 market value shown on the
22 Debtor’s July 31 Inventory Report.

23 **c. Walnut Inventory To Be Shipped and Sold Per Cash Collateral Budget**

24 The Cash Collateral Budget which is attached as Exhibit F to the Lester Declaration
25 indicates that the Debtor plans on selling 1,695,648 pounds of In-Shell inventory (all of the
26 In-Shell walnuts as of the July 31 Inventory Report), and 751,000 pounds of Meat inventory
27
28

1 though November 30, 2020 (the “**Proposed Cash Collateral Period**”). [*Cash Collateral*
2 *Budget, page 13.*]

3 The Cash Collateral Budget shows that the sale of the In-Shell inventory will generate
4 invoices of \$1,102,171, or \$.065 per pound, and that the sale of the Meat inventory will
5 generate invoices of \$1,372,000, or \$1.83 per pound. [*Cash Collateral Budget, page 13.*]

6 As such, it appears that the Debtor’s intent is to sell the Walnut Inventory at the
7 Receiver’s forced liquidation values, rather than preserve the value of the Bank’s collateral by
8 selling the Walnut Inventory at the actual market value.

9 **d. Value of Walnut Inventory To Be Sold at Market Value.**

10 Based on the market values of the Walnut Inventory as stated in the Debtor’s July 31
11 Inventory Report, the actual value of the Walnut Inventory to be sold pursuant to the Cash
12 Collateral Budget is \$6,024,711, calculated as follows:

	Pounds	\$/Lb	Value
In-Shell	1,695,648	\$1.56	\$2,645,211
Meats	751,000	\$4.50	\$3,379,500
Total			\$6,024,711

17 In addition, it appears that the Cash Collateral Budget anticipates collecting and using
18 the \$200,000 in Accounts Receivable that existed as of the Petition Date.

19 As such, it appears that the Debtor intends on using \$6,224,711 of the Bank’s Cash
20 Collateral during the Proposed Cash Collateral Period.

21 **2. Value of Adequate Protection Offered By Debtor**

22 **a. Value of Cash Collateral Replacement Lien**

23 The Cash Collateral Budget indicates that the Debtor’s use of Cash Collateral through
24 the Proposed Cash Collateral Period will generate Accounts Receivable of \$292,344. [*Cash*
25 *Collateral Budget, page 13.*] The Cash Collateral Budget also indicates that the Debtor’s use
26 of Cash Collateral will generate ending Cash Balance of \$935,365. [*Cash Collateral Budget,*
27 *page 16.*]
28

1 As such, the Cash Collateral Budget projects the value of the Cash Collateral
2 Replacement Lien at \$1,227,709.

3 **b. Value of Conservation Easement Replacement Lien**

4 The Debtor values the Conservation Easement Replacement Lien at \$5,700,000.
5 However, based on the information provide in Exhibit C to the Lester Declaration, the
6 Conservation Easement doesn't presently exist.

7 Exhibit C to the Lester Declaration includes a letter dated August 28, 2020 from the
8 Solano Land Trust (the "**Solano Land Trust Letter**"). The Solano Land Trust Letter
9 indicates that the Solano Land Trust has reached an agreement with the State of California
10 through the Sustainable Agricultural Land Conservation Program (SALC) to grant of
11 \$4,275,000. The Debtor does not attach a copy of that agreement between Solano Land Trust
12 and SALC.

13 However, the Solano Land Trust Letter attaches a letter from the State of California
14 indicated that the Grant Agreement between Solano Land Trust and the State will include
15 certain conditions which include: completion of conservation easement negotiations, an
16 acceptable final appraisal, due diligence and related documentation, evidence of match
17 funding, resolving third party mineral rights, and resolving all title issues.

18 The Solano Land Trust Letter also indicates that Solano Land Trust is currently
19 working with the United States of America through the Natural Resources Conservation
20 Service (NRCS) to finalize a grant agreement.

21 It is clear from the Solano Trust Letter that the Conservation Easement does not
22 presently exist, the funding has not been irrevocably secured, and that there are many
23 conditions that must be met before the Conservation Easement can become reality. At this
24 point in time, the Conservation Easement is pure speculation.

25 As such, the value of the Conservation Easement Replacement Lien should be
26 considered as \$0.

c. Value of Putah Creek Replacement Lien

The Bank has obtained an Appraisal Report on the Putah Creek Property (the “**Appraisal Report**”), which indicates that the market value of the Putah Creek Property as of July 22, 2020 is \$5,650,000. A true and correct copy of the Appraisal Report is attached to the James Declaration as **Exhibit S**.

The Putah Creek Property is encumbered by the RE Loan and the HELOC with combined debt of approximately \$1,915,000.

As such, there is approximately \$3,735,000 in equity in the Putah Creek Property.

d. Value of Post-Petition Crop Lien

Pursuant to Attachment H to Schedules A/B, the Debtor values the 2020 Crops at \$600,000. *[Schedule A/B, Attachment H.]* The Bank contends that it already has a first priority lien on the 2020 Crops. As such, the Post-Petition Crop Lien adds no value.

e. Adequate Protection Payment

The Cash Collateral Budget provides for an Adequate Protection Payment to the Bank in the amount of \$500,000. *[Cash Collateral Budget, page 16.]* There is no assurance that the Debtors will be able to make this payment.

f. Summary of Adequate Protection Shortfall

The Adequate Protection offered by the Debtor fall short by at least \$1,142,788, calculated as follows:

Cash Collateral to Be Used	\$6,244,788
Cash Collateral Replacement Lien	\$1,227,709
Conservation Easement Replacement Lien	\$ 0
Putah Creek Replacement Lien	\$3,375,000
Post-Petition Crop Lien	\$ 0
Adequate Protection Payment	\$ 500,000
Total Adequate Protection	\$5,702,000
Adequate Protection Shortfall	\$ 1,142,788

1 **g. Value of Other Real Property**

2 The Debtor may offer all or part of the Debtor's other real property (the "**Other Real**
3 **Property**") to provide additional adequate protection.

4 The Debtor values the Debtors Other Real Property at \$33,327,000. [*Schedule A/B,*
5 *Attachment B.*]

6 However, the Debtor's value for the Other Real Property should be questioned.

7 The Debtor values the Putah Creek Property at \$18,361,422. [*Schedule A/B,*
8 *Attachment A.*] However, the actual appraised value of the Putah Creek Property is
9 \$5,650,000, or approximately 30% of the \$18,361,422 value ascribed by the Debtor.

10 This raises the question as to whether the Debtor has similarly overvalued the Other
11 Real Property. If the Debtor has similarly overvalued the Other Real Property, the Other Real
12 Property may only be worth 30% of the Debtor's value, or \$9,998,100.

13 The Other Real Property is encumbered by the two Prudential Loans which total
14 \$14,000,000. [*Lester Declaration, par. 51.*] As such, there may be a negative equity in the
15 Other Real Property.

16 There should be a further investigation of the value of the Other Real Property before
17 relying on the Other Real Property to offer Adequate Protection.

18 **B. Other Issues To Be Considered.**

19 **1. Can The Debtor Meet The Projected Sales Objectives?**

20 The Debtor's ability to continue in business and meet its operating expenses appears to
21 be contingent on the Debtor meeting its sales objectives as set forth in the Cash Collateral
22 Budget.

23 The Debtor projected selling 800,000 pounds of Walnut Inventory, generating
24 \$709,000 of invoices in the week ending September 11, 2020. Did the Debtor meet these
25 sales projections for the week ended September 11, 2020?

1 The Debtor projects selling 995,648 pounds of Walnut Inventory, generating
2 \$836,171 in invoices in the week ending September 18, 2020. What are the prospects for the
3 Debtor meeting the sales projections for the week ending September 18, 2020?

4 **2. How Loan Can the Debtor Sustain Operations While Losing Money.**

5 The Declaration of Joe Danelson in Support of Reply to Opposition to Confirmation of
6 Appointment of Receiver and Preliminary Injunction (the “**Danelson Declaration**”) is
7 attached to the RFJN as **Exhibit C**.

8 As set forth in the Danelson Declaration, a review of the Debtor’s company prepared
9 financial statements for the year ended December 31, 2019 shows that Mr. Lester had a net
10 operating loss of <\$3,538,339>. A review of Mr. Lester’s CPA reviewed financial statement
11 for the year ended December 31, 2019 shows that Mr. Lester had a consolidated loss from
12 operations of <\$2,595,175>. Mr. Lester’s CPA reviewed financial statement for the year
13 ended December 31, 2018 shows that Mr. Lester had a consolidated loss from operations of
14 <\$2,186,967>. Mr. Lester’s CPA reviewed financial statement for the year ended December
15 31, 2017 shows Mr. Lester had a consolidated loss from operations of <\$1,315,990>.

16 *[Danelson Declaration, par. 50.]*

17 Operating losses during the past three years, during a period of strong walnut prices,
18 have accelerated. *[Danelson Declaration, par. 50.]*

19 Mr. Lester’s total liabilities also increased during the period from \$19,494,510 on 12-
20 31-2017, to \$21,598,609 on 12-31-18, and finally to \$23,859,464 on 12-31-2019. *[Danelson*
21 *Declaration, par. 50.]*

22 The increasing losses and higher carrying cost of increasing debt is unsustainable,
23 especially considering meaningfully lower walnut prices now than during the previous three
24 years. *[Danelson Declaration, par. 50.]*

25 Mr. Lester’s operating losses have continued in 2020. A review of Mr. Lester’s
26 company prepared financial statements through April 30, 2020 shows that Mr. Lester had a
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1 net operating loss of <\$704,000> for the first four months of 2020. [*Danelson Declaration*,
2 *par. 51.*]

3 How long can the Debtor sustain operations while the Debtor is losing money?

4 **3. Has The Debtor Taken Steps to Reduce Operating Expenses?**

5 Historically, the Debtor has purchased, processed, and sold walnuts purchased from
6 other growers. The Cash Collateral Budget does not show that the Debtor intends to purchase
7 any walnuts from other growers during the Cash Collateral Period.

8 Do the operating expenses shown in the Cash Collateral Budget reflect reduced
9 expenses to account for the fact that the volume of walnuts processed will be significantly less
10 than prior years?

11 Should the Debtor still be processing his own crops or is it more economically feasible
12 to send the 2020 Crops to another processor?

13 **4. Does the Debtor Need to Make Adequate Protection Payments to Prudential?**

14 The Cash Collateral Budget includes substantial debt service payments to Prudential of
15 \$162,363. [*Cash Collateral Budget, page 16.*] Yet, the Debtor values the Other Real
16 Properties securing the Prudential Loans at \$33,327,000. As such, according to the Debtor,
17 Prudential is more than adequately protected.

18 Should the Debtor be permitted to use the Bank's cash collateral to make these
19 payments to Prudential?

20 **C. The Debtor's Representations Regarding His Historical Relationship With The**
21 **Bank Are Grossly Inaccurate.**

22 As set forth in the Danelson Declaration, the Debtor approached the Bank in 2018 and
23 asked for additional financing to develop the McCune Ranch. The Bank advised the Debtor
24 that it could not provide such financing because the amount requested would cause the
25 Debtor's total loans outstanding with the Bank to exceed the legal lending limits. At the
26 Debtor's request, the Bank referred the Debtor to Prudential, who eventually lent the Debtor
27 \$14,000,000. Prudential required the Debtor to pay off other loans secured by property that
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1 Prudential was requiring as collateral. The Debtor walked away from the Prudential loans
2 with over \$1,900,000 in cash. [See *Danelson Declaration par. 25 – 49*]

3 The Debtor fails to mention the \$2,500,000 Bridge Loan made by the Bank in 2018, to
4 allow the Debtor to pay for 2018 crops purchased from other growers.

5 The Debtor also fails to mention the \$2,300,000 overdraft that the Debtor asked to the
6 Bank to cover to pay growers for the crops delivered at the end of 2019.

7 **III**

8 **CONCLUSION**

9 The Debtor has failed to demonstrate that the Bank's interests will be adequately
10 protected as a result of the Debtor's proposed use of the Cash Collateral.

11 There are serious questions regarding the Debtor's ability to sustain the Debtor's
12 operations.

13 The Motion for Use of Cash Collateral should be denied, and if not denied, at least
14 limited in amount to what is absolutely essential (and for which the Bank's interests are
15 adequately protected) and in duration to a shorter period of time to determine if the Debtor
16 can in fact sustain the Debtor's operations. At most the use of cash collateral should be
17 permitted only for an additional 4-week period to enable a meaningful comparison of the
18 Debtor's cash flow projections to actual results.

19 Dated: September 14, 2020

KRAFT LAW

20 */s/ Douglas H. Kraft*

21 _____
22 Douglas H. Kraft, Esq.

23 Attorney for First Northern Bank of Dixon
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